IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
February 20, 2002 Session

MARIA L. CALDWELL v. BRIDGESTONE/FIRESTONE, INC., and HAZEL R. ALBERT, Commissioner, Tennessee Department of Labor and Workforce Development

Appeal from the Chancery Court for Cannon County
No. 98-51 Robert Corlew, III, Judge

No. M2001-01067-COA-R3-CV - Filed February 27, 2004

Employee filed for unemployment compensation benefits because, even though she was unable to perform the physical tasks of her job because of a non-work related injury, she may have been denied a job, consistent with her medical restrictions, guaranteed by her union contract. The trial court's decision affirming the Board of Review's conclusion that the rights under the union contract are irrelevant to her rights to unemployment compensation is affirmed because the job guaranteed by her union contract constitutes only part, rather than all, of her "former duties" as required by T.C.A. §50-7-303(a)(1).

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed and Remanded

JOHN B. HAGLER, SP. J., delivered the opinion of the court, in which BEN H. CANTRELL, P.J., M.S. and PATRICIA J. COTTRELL, J., joined.

William Kennerly Burger, Nashville, Tennessee, for the appellant, Maria L. Caldwell.

Stephen W. Grace and Terrence O. Reed, Nashville, Tennessee, for the appellee, Bridgestone/Firestone, Inc.

Paul G. Summers, Attorney General and Reporter; Douglas E. Dimond, Assistant Attorney General, Nashville, Tennessee, for the appellee Albert.

OPINION

This is an unemployment compensation case. Petitioner, Maria L. Caldwell, appeals from the order of the trial court dismissing her petition for certiorari and affirming the decision of the Division of Employment Security Board of Review (the "Board") which disallowed her claim for unemployment compensation benefits upon finding that when she was able to return to work, after an injury unrelated to her employment, she was unable to perform her "former duties" as required by T.C.A. § 50-7-303(a)(1). We affirm the judgment of the trial court.

Caldwell was employed by Bridgestone/Firestone, Inc. ("BFI") in 1988, and for about the first seven and one-half years, she was assigned various jobs within one department including the job of fork lift (or fork truck) driver.

In 1995 she successfully "bid into" a production line job in another department. This job, which she referred to as "bead filler operator," involved running a production machine making bead fillers and tire beads. It is undisputed that, as she testified, she "pushed, pulled, tugged, shoved, lifted approximately 90,000 lbs." in a 12-hour shift in this "extremely physical" job. She had been working at this particular job for approximately one and one-half years when, on March 16, 1997, she was seriously injured in a four-wheeler accident unconnected with her employment. As a result of her injuries, Caldwell was on medical
leave of absence for approximately one year.

On March 11, 1998, she was released by her physician to return to work, but his written instructions permanently restricted her from lifting over 20 lbs. and repetitive use of her right upper extremity. The physician specifically provided, however, that she could drive a truck, fork lift, or cart.

When Caldwell offered herself for work with these permanent medical restrictions, BFI told her that the medical restrictions prevented her from performing her duties because they involved daily lifting, pulling, and pushing over 20 lbs. She was further told that there were no vacancies at that time consistent with her restrictions.

She then applied for unemployment benefits stating on her application that she was unable to do her "usual work," but that she was able to do work "other than [her] usual work," such as driving a fork lift.

T.C.A. §50-7-303(a)(1) which governs unemployment benefits in circumstances such as these provides in pertinent part:

> 50-7-303. Disqualification for benefits.–(a) *Disqualifying Events.* A claimant shall be disqualified for benefits:

> (1) If the administrator finds that the claimant has left such claimant's most recent work voluntarily without good cause connected with such claimant's work. Such disqualification shall be for the duration of the ensuing period of unemployment and until such claimant has secured subsequent employment covered by an unemployment compensation law of this state, or another state, or of the United States, and was paid wages thereby ten (10) times such claimant's weekly benefit amount. No disqualification shall be made hereunder, however, if such claimant presents evidence supported by competent medical proof that such claimant was forced to leave such claimant's most recent work because such claimant was sick or disabled and notified such claimant's employer of that fact as soon as it was reasonably practical to do so, and returned to that employer and offered to work as soon as such claimant was again able to work, *and to perform such claimant's former duties*.

Emphasis added.

Caldwell's claim was disallowed, and she requested a hearing before the Appeals Tribunal which, following a hearing, found as follows:

> "FINDINGS OF FACT: Claimant's most recent employment prior to filing this claim was with Bridgestone USA, Inc. as a factory worker from September 28, 1988 until March 11, 1998. Claimant was injured in an off the job accident in 1997. She was released with limitations of not lifting more than 20 pounds and no repetitive usage of her right shoulder. When claimant was working she was constantly lifting, pushing and pulling. She moved about 90,000 pounds a day. The employer did not have any work for her within her restrictions.
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> CONCLUSIONS OF LAW: The Appeals Tribunal finds that the claimant left after a non-work related injury under T.C.A. §50-7-303(a)(1). Claimant has been released by her doctor with restrictions. The employer does not have any work for her within her restrictions. The Agency decision is affirmed."

Caldwell appealed to the Board which affirmed the denial of benefits.

She then timely filed her petition for certiorari in the Chancery Court. It is noted, parenthetically, that after the Appeals Tribunal hearing Caldwell was reemployed on

June 2, 1998, consistent with her medical restrictions, as a fork lift operator. This was not because a vacancy had occurred, but rather was because her seniority, pursuant to a labor-management contract, required that a less senior employee be "bumped" from the position so that she could assume it. Although it is not material here, it may be that she was entitled to that position, under the union contract, when she first presented for reemployment on March 11, 1998. She held this position for approximately two months when she was "bumped" from it by someone with greater seniority. In November 1998, while this case was pending in Chancery Court, her medical restrictions were lifted and she was reemployed.

Thus, her claim for unemployment benefits relates only to the period from March 11, 1998, until June 2, 1998, when she was reemployed as a fork lift driver, pursuant to the union contract.

Since the employment as fork lift driver occurred after the Board's review, the trial judge remanded the case to the Board to determine whether Caldwell, by virtue of her seniority under the contract, had been entitled to return to work on March 11, 1998, as a fork lift driver and, if so, whether than would mean that she had been able to return to her "former duties" as required by the statute.

On remand, the Board, following another hearing, found that Caldwell's rights under the union contract were irrelevant to her rights under the statute:

> "FINDINGS OF FACT: The claimant's most recent employment prior to filing this clam was for Bridgestone USA, Inc. from September 28, 1988, until March 16, 1997, when she was seriously injured in an accident that was not related to work. She was released to return to work with restrictions on March 11, 1998. The employer attempted to find work for her but, due to the size of its operations, was unable to do so at that time. The claimant filed a claim for unemployment benefits on March 19, 1998, which was denied. On June 2, 1998, the employer located a position that would accommodate her restrictions. The claimant returned to work for a couple of months until another employee with higher seniority displaced her in August 1998. In November of the same year, she was released without restrictions and was re-employed.
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> CONCLUSIONS OF LAW: After carefully considering the entire record in this case, including the additional evidence received during the Board of Review hearing, we find that the claimant left her employment without
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> good cause connected with work and, thus, is disqualified from receiving unemployment benefits under T.C.A. §50-7-303(a)(1). The claimant is not eligible for unemployment benefits under the medical exception to the above-cited statute

> because the employer re-employed her as soon as she was released to return to work without restrictions. The claim was remanded to the Agency by the Chancellor for additional evidence related to whether the claimant is eligible for benefits during the time that she was unemployed because of her injuries. The Board has considered all the available and relevant documentation on the issue of the claimant's seniority and the factual circumstances relevant to the employer's availability of work within the claimant's work restrictions and upon her attempt to return to work as directed by the Chancellor. We do not find that such evidence, however, is relevant to the unemployment benefit issue in this case however relevant it might be to the area of labor law. After the additional hearing, there has been no evidence received that would justify a change in the prior Board of Review decision."

The trial judge expressed his disagreement with the Board's conclusion as follows:

> Clearly the better decision appears to us to require that a worker who leaves her employment because of a non-work related injury must prove only that she has recovered sufficiently again to return to the gainful employment of her employer and to show that she is physically able to perform a job for which she holds the required qualifications which job is either vacant, or open to her because of a favored position contractually guaranteed to her (by seniority) by her employer."

Nonetheless, he correctly articulated the established principles governing review of Board decisions and, therefore, affirmed the Board:

> "If in fact the administrative tribunal considered the provisions of T.C.A. §50-7-303(a)(1) and reached a conclusion different from that reached from this court . . . that the court should not reverse the finding of an administrative tribunal based upon the interpretation of a statute reached by that administrative tribunal so long as the statute is construed by the administrative tribunal in a reasonable manner."

This court is also bound by these same limitations which have been succinctly set forth by our Supreme Court:

> "[t]o sustain the Board of Review's application of the provision in the statute under consideration, [the reviewing court] need not find that its construction is the only reasonable one or even that it is the result [the reviewing court] would have reached had the question arisen in the first instance in judicial proceedings. All that is needed to support the commission's interpretation is that it has warrant in the record and a reasonable basis in law."

Cawthron v. Scott, 400 S.W. 2d 240,242 (Tenn. 1966); *Thach v. Scott*, 410 S.W. 2d 173,176 (Tenn. 1966); also see *Sargent v. Culpepper*, 1996 W.L. 600332 (Tenn. Ct. App. 10/16/96).

Caldwell argues that since she was qualified to drive a fork lift, having driven one at various times during her nine years of employment, and since the union employee whom she "bumped" in June for that position should have been "bumped" in March, she was "able to work" *and* to perform her "former duties" on March 11, 1998, as required by the statute.

The irrelevance of the union contract to unemployment benefits becomes much clearer if we simply assume that there was an actual vacancy in the position of fork lift driver on March 11, 1998, and that Caldwell was not allowed to fill that vacancy. This reveals and isolates the essential issue: whether a refusal by the employer to reemploy Caldwell as a full-time fork lift driver would have constituted a refusal to return her to her "former duties," thereby entitling her to unemployment benefits?

The term "former duties" has been defined in a helpful way by the use of words or terms considered synonymous with the term. For instance, in *Cawthron*, 400 S.W. 2d at 241, the term "former duties" was referred to as an employee's "usual work" as opposed to "other work." In *Thach*, 410 S.W. 2d at 176, "former duties" was equated with "normal duties."

In this case, it will be recalled that Caldwell stated in her written application that she could not perform her "usual work" but was able to do "other work." And it was conceded early on that she was unable to do the lifting which a "bead filler operator" is required to do.

There is certainly material evidence in the record to warrant a finding that Caldwell's normal duties or usual work at the time of her injury was that of "bead filler operator," and that she could not return to that work.

However, Caldwell's counsel states in his brief (p. 6) that, "In March 1997 her work duties in her production job included various job activities some of which involved the operation of a fork truck." This is to support the argument that since she was at some time a full-time fork lift driver prior to transferring to production in 1995, and since driving a fork lift was one of her job activities after transferring to production, filling the position of fork lift driver full-time would constitute a return to her "former duties." Although it is undisputed that she worked as a fork lift driver during parts of her seven and one-half years of employment, it is less clear that her job activities involved the operation of a fork lift during her year and a half on the production line.

Be that as it may, the argument that being a full-time fork lift driver at some time before 1995, or a part-time one after transferring to production, entitled her to a full-time driver position is without merit for purposes of unemployment compensation. In *Thach*, the Supreme Court affirmed the Board's finding that an employee who had done work in some seven categories of work was unable to perform his "former duties" because a non-work related injury left him able to do six categories but not the heavy lifting required by the seventh category. *Id*. at 175. If driving a fork lift was only a part of her work duties, the inescapable legal result is that she is not entitled to unemployment compensation because she was "able to perform a part of [her] normal duties, but not all of them, because of a physical impairment which was not caused or aggravated by [her] employment." *Id.* at 176-177.

We, therefore, conclude that the Board's findings are warranted by material evidence and that there is a reasonable basis for its construction of the statute.

The judgment of the court below is affirmed and the cause is remanded to the Chancery Court of Cannon County. Costs on appeal are taxed to the appellant.

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JOHN B. HAGLER, SPECIAL JUDGE